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DATE: November 19, 2004

TO: Rexford N. Barnic, Primary Examiner

COMPANY: Patent & Trademark Office

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***Agenda for Examiner Interview on November 22, 2004
For Application No. 10/672,097***

Let's discuss the basis and rationale of the double patenting rejection.

To establish a *prima facie* case of nonstatutory-type double patenting, the Examiner must (1) identify the inventions claimed in the claims under consideration and in the parent claims; (2) establish that any variation between the inventions claimed in the claims under consideration and the earlier-issued patent claims would have been obvious to a person of ordinary skill in the art; and (3) the Examiner's showing of obviousness must follow the analysis used to establish a *prima facie* case of obviousness.

MPEP § 804, B Nonstatutory Double Patenting, I. Obviousness Type states:

"Any obviousness-type double patenting rejection should make clear:

- (A) The differences between the inventions defined by the conflicting claims – a claim in the patent compared to the claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent."